



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
TPC UNIVERSITY, L.C.
FOR
TPC UNIVERSITY
Registration No. 73617**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and TPC University, L.C. regarding TPC University, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Facility" means the TPC University, L.C. facility, located at 9325 Discovery Blvd. in Prince William County, Virginia.

5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
6. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "Permit" means a NSR permit to construct and operate a diesel engine driven-electric generator set, which was issued under the Virginia Air Pollution Control Law and the Regulations to TPC University, L.C. on June 21, 2007.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
10. "TPC University" means TPC University, L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. TPC University is a "person" within the meaning of Va. Code § 10.1-1300.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
14. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (*see* 40 CFR 60, Appendix A).

SECTION C: Findings of Fact and Conclusions of Law

1. TPC University owns and operates the Facility in Prince William County, Virginia. The Facility is an office building park which has a diesel engine driven-electric generator that is used for stand-by power in the event of the loss of grid power to the Facility. This engine-generator set is the subject of the Permit.
2. On January 25, 2010, Department staff conducted a Partial Compliance Evaluation of the Facility's submitted records to determine compliance with the applicable requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:
 - a. TPC University sent notification September 24, 2007 notifying DEQ of the actual startup date for the diesel engine driven-electric generators as September 20, 2007;
 - b. TPC University failed to conduct initial performance tests for nitrogen oxides from the diesel engine driven-electric generator set;

- c. TPC University failed to conduct the initial Visible Emissions Evaluation of the diesel engine-driven electric generators.
3. Condition 14 of the Permit requires initial performance testing for nitrogen oxides be conducted within 180 days from startup of the facility.
4. Condition 15 of the Permit requires a VEE be conducted within 180 days from startup of the facility.
5. On February 11, 2010, based on the inspection and follow-up information, the Department issued a Notice of Violation to TPC University for the violations described in paragraph C(2) through C(4) above.
6. On February 19, 2010, TPC University submitted a written response to the NOV. On March 3, 2010, Department staff met with representatives of TPC University to discuss the violations, including TPC University's written response.
7. TPC University submitted a stack test protocol on March 23, 2010, for completing the required performance nitrogen oxide tests and VEE. Department Staff observed the testing on April 8, 2010 and on May 27, 2010, approved the results which show the emissions unit operates within permitted limits.
8. Based on the results of the January 25, 2010, and April 8, 2010 inspections, the March 3, 2010, meeting, and the documentation submitted on February 19, 2010, the Board concludes that TPC University has violated Permit Condition 14 and Permit Condition 15 as described in paragraphs C(2) through C(4), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders TPC University, L.C., and TPC University, L.C. agrees to:

1. Pay a civil charge of \$8645.60 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

TPC University, L.C. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the

requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of TPC University, L.C. for good cause shown by TPC University, L.C., or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, TPC University, L.C. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. TPC University, L.C. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. TPC University, L.C. declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by TPC University, L.C. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. TPC University, L.C. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. TPC University, L.C. shall show that such circumstances were beyond its control and not due to a lack of good faith or

diligence on its part. TPC University, L.C. shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the TPC University, L.C. intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

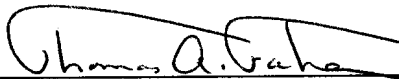
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and TPC University, L.C.
11. This Order shall continue in effect until:
 - a. TPC University, L.C. petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to TPC University, L.C..

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve TPC University, L.C. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by TPC University, L.C. and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of TPC University, L.C. certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind TPC University, L.C. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of TPC University, L.C..
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, TPC University, L.C. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of August, 2010.


Thomas A. Faha, Regional Director
Department of Environmental Quality

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TPC University, L.C. voluntarily agrees to the issuance of this Order.

Date: 8/2/10 By [Signature], Vice President
(Person) (Title)
TPC University, L.C.

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 2 day of
August, 2010, by Suzanne M. Petro who is
no relation of TPC University, L.C., on behalf of the corporation.

[Signature]
Notary Public

7040887
Registration No.

My commission expires: November 30 2010

Notary seal:

